

Message Text

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FOLLOWING FROM SAPPORO SENT ACTION TOKYO SEPT 5 REPEATED FOR
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QUOTE

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FOR PETREE

E.O. 11652: N/A

TAGS: PGOV, JA

SUBJECT: NAGANUMA COURT CASE DECISION TO BE RENDERED SEPTEMBER 7.

SUMMARY: JUDGE FUKUSHIMA, REPRESENTING THREE JUDGE SAPPORO
DISTRICT COURT, WIDELY EXPECTED TO ISSUE RULING IN SAPPORO OF
SEPTEMBER 7 CALLING THE JAPAN SELF DEFENSE FORCES (JSDF)
"CONSTITUTIONALLY ILLEGAL." PRACTICAL EFFECT IS SLIGHT SINCE
SUPREME COURT NOT LIKELY TO UPHOLD DECISION. GOVERNMENT EMBARRASSED
BY DISCLOSURE THAT DEFENSE AGENCY HAS DISTRIBUTED 16,000 PHAMPLETS
DENIGRATING IMPORTANCE OF DECISION IN ADVANCE.

1. REPORTING OFFICER AT RECEPTION FOR NEWLY ARRIVED SUPERINTENDENT
PUBLIC PROCURATOR ON SEPTEMBER 3 BROUGHT UP WIDELY DISCUSSED
NAGANUMA COURT CASE WITH SEVERAL GOVERNMENT AND PRIVATE LEGAL
EXPERTS. CONSENSUS INDICATED THAT SEPTEMBER 7TH DECISION BY
THREE MEN SAPPORO DISTRICT COURT, HEADED BY JUDGE FUKUSHIMA,
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LIKELY TO CALL THE JSDF "CONSTITUTIONALLY ILLEGAL." HOKKAIDO

MASS MEDIA HAVE BEEN MAKING THE SAME PREDICTION.

2. MOST LEGAL OBSERVERS AGREED THAT THE PRACTICAL EFFECT WOULD BE

MINIMAL SINCE THE GOVERNMENT WOULD APPEAL IMMEDIATELY. THE NEXT STEP WOULD ORDINARILY BE THE SAPPORO HIGH COURT, BUT MR. ITO, PRESIDENT OF SAPPORO HIGH COURT, TOLD THE REPORTING OFFICER THAT HIS OPINION, THE CASE WOULD BE APPEALED DIRECTLY TO THE SUPREME COURT, SKIPPING THE HIGH COURT. PARTICIPANTS IN THE DISCUSSION (HEAD OF SAPPORO BAR ASSOCIATION, DISTRICT COURT INVESTIGATORS) JOKED THAT THIS WOULD TAKE AT LEAST TEN YEARS; ITO POINTED OUT THAT SUPREME COURT JUDGES WERE ELECTED AND RESPONSIVE TO POLITICAL REALITIES, WHILE DISTRICT COURT JUDGES WERE APPOINTED BY CABINET FROM A LONG LIST SUPPLIED BY THE SUPREME COURT AND ANY DISTRICT COURT DECISION COULD BE THE PRIVATE OPINION OF "ONE OR TWO AMONG THOUSANDS."

3. COMMANDING GENERAL NORTHERN ARMY LT. GEN MAI, ALSO AT PARTY, SAID THAT "IF THE COURT MADE THE WORST DECISION IT COULD," IT WOULD HAVE NO EFFECT ON THE STATUS OF THE JSDF SINCE "PEOPLE HAVE ALREADY SANCTIONED THE JSDF," AND IT IS A "POLITICAL REALITY."

4. THE BACKGROUND OF THE CASE IS AS FOLLOWS: THE DEFENSE AGENCY IN MAY 1968 DECIDED TO CONSTRUCT NIKE J MISSILE BASES AT CHITOSE AND NAGANUMA (CLOSE TO CHITOSE) BY THE END OF FISCAL YEAR 1969 AS PART OF THE THIRD DEFENSE FORCES EQUIPMENT PLAN (1967-1971). THE CONSTRUCTION OF BOTH BASES HAS SINCE BEEN COMPLETED. NO TROUBLE OCCURRED AT CHITOSE.

5. THE USE OF A NATIONAL FOREST RESERVE IN NAGANUMA WAS NECESSARY TO CONSTRUCT THE NAGANUMA BASE AND THE DEFENSE AGENCY APPLIED FOR THE RELEASE OF 35.1 HECTARES. THE MINISTRY OF AGRICULTURE AND FORESTRY HELD PRESCRIBED PUBLIC HEARINGS AT SAPPORO AND NAGANUMA, WHICH ENDED IN SOME CONFUSION. EVENTUALLY ON JULY 7, 1969 THE MINISTER OF AGRICULTURE AND FORESTRY RELEASED THE LAND WITH THE PROMISE OF THE SUBSTITUTE FACILITIES FOR DRINKING AND IRRIGATION WATER, AND AS PROTECTION AGAINST FLOODS.

6. NAGANUMA PLAINTIFFS, SUPPORTED BY SOHYO LEGAL SERVICES, APPEALED TO THE SAPPORO DISTRICT COURT, ALONG TWO BROAD GROUNDS. THE FIRST LIMITED OFFICIAL USE

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WHICH IS TO BE RESOLVED ON SEPTEMBER 7, STATED THAT A NIKE BASE HAS MILITARY POTENTIAL OF THE TYPE CONTRARY TO PARAGRAPH 2, ARTICLE 9 OF THE CONSTITUTION. THE OTHER APPEAL WAS BASED ON PROCEDURAL AND ENVIRONMENTAL ISSUES. JUDGE SHIGEO FUKUSHIMA ON AUGUST 22, 1969 UPHELD THE PLAINTIFF'S APPEALS BASED ON ENVIRONMENTAL CONSIDERATIONS RELATED TO PROSPECTIVE FLOODING AND ORDERED THE WITHDRAWAL OF THE RELEASE OF THE LAND. THE GOVERNMENT IMMEDIATELY APPEALED TO THE SAPPORO HIGH COURT FOR REVOCATION OF

FUKUSHIMA'S DECISION. MR. MUTO, CHIEF OF THE SAPPORO HIGH COURT, ON JANUARY 23, 1970 OVERTURNED THE LOWER COURT AND SUPPORTED THE APPEALS OF THE STATE. THE NAGANUMA PLAINTIFFS DROPPED APPEALS ALONG THE ENVIRONMENTAL LINE.

7. ANOTHER CONTRETEMPS OCCURRED IN THE FALL OF 1969 WHEN THEN CHIEF OF DISTRICT COURT KENTA HIRAGA INFORMED FUKUSHIMA THROUGH PRIVATE LETTER THAT HE, HIRAGA, CONSIDERED THE RELEASE OF THE LAND PROPER AND THAT THE COURT HAD NO AUTHORITY TO DETERMINE THE LEGALITY OR CONSTITUTIONALITY OF THE JSDF. HIRAGA WAS SUBSEQUENTLY WARNED BY THE SUPREME COURT THAT HE WAS JEOPARDIZING PUBLIC SUSPICIONS ABOUT THE FAIRNESS OF THE COURT. HIRAGA WAS SUBSEQUENTLY TRANSFERRED TO THE TOKYO HIGH COURT IN LATE 1969.

8. EFFECT OF COURT DECISION ON PASSAGE OF PENDING DEFENSE BILLS WILL NOT BE HELPFUL. SEPTEMBER 5 HOKKAIDO SHIMBUN PUBLISHED ARTICLE STATING THAT LDP LOWER HOUSE DELEGATE MR. NAKU FUNATA (HEAD OF UNATA FACTION) HAD COMPLAINED AT HIS FACTION'S SUMMER SESSION IN ATAMI THAT EXTENSION OF UPPER HOUSE SESSION AND THIS COURT CASE WOULD JEOPARDIZE PASSAGE DEFENSE BILLS.

9. SEPTEMBER 5 YOMIURI PRINTED THAT AT 4TH UPPER HOUSE CABINET MEETING DIRECTOR GENERAL OF NATIONAL SELF DEFENSE AGENCY YAMANAKA HAD BEEN EMBARRASSED BY THE REVELATION THAT 16,000 PHAMPLETS DENIGRATING THE COURT'S DECISION BEFORE IT WAS RENDERED HAD BEEN PRINTED AND DISTRIBUTED TO JSDF PERSONNEL. YAMANAKA STATED THAT IT HAD BEEN DONE WITHOUT HIS KNOWLEDGE. SIGNED ECTON
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